

1 (Whereupon, the above-entitled matter went
2 off the record at 2:54 p.m. and resumed at 2:55 p.m.)

3 MR. SHOOK: On or about March 8, 2001,
4 were you aware of EB20?

5 THE WITNESS: I vaguely recall seeing this
6 cover letter, yes.

7 BY MR. SHOOK:

8 Q Do you recall seeing it approximately
9 when?

10 A Around that time it might have been March
11 8th. It might have been after. I can't recall exactly
12 -- the exact date I saw it.

13 Q Now when it says Re: enclosures, do you
14 have any knowledge as to what enclosures are being
15 referred to?

16 A I'm afraid I don't remember without being
17 prompted, I don't think I can recall at this time what
18 the enclosures were.

19 Q But you were aware of this on or about
20 March 8, 2001, this being EB20?

21 MR. DUNCAN: Objection. It
22 mischaracterizes his testimony.

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1 JUDGE SIPPEL: Try it again, Mr. Shook,
2 please.

3 MR. SHOOK: I thought I captured his
4 testimony quite nicely.

5 JUDGE SIPPEL: Well ask him if he agrees
6 with that?

7 MR. SHOOK: Do you agree that on or
8 about March 8, 2001, you were aware of EB20?

9 THE WITNESS: I have a vague recollection
10 of that -- the language in it reads as if I've seen it
11 before. It's a vague recollection of reading those
12 sentences from Nicole to Ernie. That's why -- it
13 rings as if there is some memory of it, but can I put
14 an exact time stamp on that memory, I can't right now.

15 JUDGE SIPPEL: Well it's only, what, about
16 five years ago, four or five years ago, four years
17 ago.

18 THE WITNESS: Four years ago.

19 JUDGE SIPPEL: Yes, and this is a very --
20 considering all the other business documents handed,
21 this one is rather unusual, isn't it? It's -- I mean
22 in terms of the subject matter. If I'm looking at the

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1 same one that you are, this is March 8, 2001, correct?

2 THE WITNESS: That's what is says, March
3 8.

4 JUDGE SIPPEL: To Sanchez from Sawaya.

5 THE WITNESS: From Sawaya, Re: Enclosures.

6 JUDGE SIPPEL: Does it say speaking with
7 you the other day?

8 THE WITNESS: Yes.

9 JUDGE SIPPEL: Then she goes on to
10 describe her take on the situation.

11 THE WITNESS: Yes.

12 JUDGE SIPPEL: And you do have -- this is
13 one document you do say that you do seem to have a
14 general recollection of.

15 THE WITNESS: Yes. The cover letter --
16 the enclosures, what I don't have a recollection of at
17 this moment is what the enclosures were.

18 JUDGE SIPPEL: All right. Thank you.
19 Okay.

20 MR. SHOOK: Mr. Helgeson, I'd now like to
21 direct your attention to EB Exhibit 21,

22 THE WITNESS: EB 21?

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1 BY MR. SHOOK:

2 Q Mr. Helgeson, would you prefer that you
3 read it or would you prefer that I read it to you?

4 A Let me see what it is first, hold on.
5 Okay. Let me try to read it first.

6 (Whereupon, the above-entitled matter went
7 off the record at 2:59 p.m. and resumed at 3:01 p.m.)

8 MR. SHOOK: Were you aware of EB 21 on or
9 around March 8, 2001?

10 THE WITNESS: I would have to say I don't
11 recall being, reviewing this on March 8th or right
12 after. I've seen it in preparing for this hearing,
13 but I don't recall a time seeing it.

14 BY MR. SHOOK:

15 Q So your testimony would be you were not
16 aware of EB Exhibit 21 on or around March 8, 2001?

17 A What I -- I don't recall seeing this
18 document on March 8th, no, at this time, no.

19 Q That wasn't exactly my question.

20 A Okay, sorry.

21 Q The question was were you aware of EB 21
22 on or around March 8, 2001?

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1 A I was aware that Nicole was working on the
2 response to the FCC's letter with Ernie, for Ernie or
3 with Ernie. That's what I recall.

4 Q Okay, well with that in mind, and this
5 certainly seems to be something in that sense. Now
6 following Number -- actually before we get to that
7 point, it says March 8, 2001, it says To Ernie
8 Sanchez. It says From Nicole Sawaya, General Manager.
9 Re: KALW and FCC letter dated 2/5/01 reference 1800-
10 B3.

11 Then it goes on to state, "in response to
12 the letter from the FCC, (1) No, missing was:
13 Ownership report January 31, 1993, was put in file
14 December 10, 1997. Missing was ownership report
15 January 31, 1995, was put in file December 10, 1997.
16 See enclosed copies."

17 Do you know where or how Ms. Sawaya
18 obtained that information?

19 A I don't know how she got that information
20 whether it was from me or from her own personal
21 inspection of the file.

22 Q Do you know whether that information was

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1 accurate?

2 A At this point I don't remember if it was
3 still accurate -- if that was accurate, but if that's
4 what you saw, that's what you saw. If that's what you
5 say that she saw.

6 Q Are you suggesting that one or more parts
7 of that response were not accurate?

8 A I have no reason to believe that it's
9 inaccurate.

10 Q In March of 2001, did Ms. Sawaya share her
11 conclusion with you that the 1993 and 1995
12 Supplemental Ownership Reports were put in the file on
13 December 10, 1997?

14 A I don't know if she shared that conclusion
15 with me at that time.

16 Q You don't know what?

17 A I don't -- what I recall -- what I do
18 recall was, again, preparing documents that we
19 believed should be in the public file, that I believe
20 should have been in the public file and at that time,
21 and we prepared documents that would satisfy that
22 information, for those time periods.

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1 Q Okay, so is what you're telling me that
2 she didn't share her conclusion that the '93 and '95
3 reports weren't put in the public file until December
4 10, 1997?

5 A I think she saw that that's what -- she
6 looked at the dates of them, and she assumed from that
7 that was the case, yes.

8 Q Did she tell you that that's what she saw?

9 A I don't remember her telling me that's
10 what she saw or that she just saw it on her own and
11 that's what she wrote down on this memo.

12 Q Do you recall discussing with her when
13 Supplemental Ownership Reports for 93 and 95 were put
14 in the public file?

15 A When she came to the station in 2001, I
16 don't recall specifically, again, having that
17 conversation. She was responding to questions in the
18 February 5th letter, and I don't remember if she
19 specifically just went on my word or of -- or of what
20 I saw when I inspected the file subsequent to that or
21 if she went on and she did her own search of it.

22 Q Well in terms of your word, did you tell

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1 her that the 93 and 95 Supplemental Ownership Reports
2 weren't put in the file until December 10, 1997?

3 A At that time in 2001 I would have -- we
4 would have inspected the file, and what was in there
5 was in there and dated by the date it was put in.

6 I don't know if I would have necessarily
7 told her that those documents were dated on those
8 dates.

9 Q She didn't come to you and say anything
10 about these files being -- or these ownership reports
11 being late filed?

12 A What I can recall at that time was talking
13 to her and speaking around this whole time, in early
14 --when she first got to the station about -- we didn't
15 if we hadn't found a document that should have been
16 there in 1997 when -- in late 1997 when Jeff Ramirez
17 was at that time still General Manager and responding
18 to GGPR, we then prepared a document and had it signed
19 and put it in what we believed should have been there.

20 At that time we still were operating under
21 the impression, I was operating under the impression,
22 that documents had been removed from the file sometime

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1 in '97, and I told her the story about documents being
2 -- my files being gone through, Jeff Ramirez's
3 computer, e-mails being gone through and so on.

4 So when a document was dated after the
5 date perhaps it should have been dated -- normally you
6 would think it would have been dated, that was my
7 response to her when I was in there at that time.

8 Q In the case of these Supplemental
9 Ownership Reports, were you aware that there were
10 actually two separate obligations, one being not only
11 to place these documents in the public file, but the
12 other obligation being to send them to the FCC for
13 filing?

14 A I knew that documents had to be sent to
15 the FCC. That was the reason that they were being
16 prepared initially, and that copies were kept. By
17 that time I knew the copies were supposed to be kept
18 in the public file of the station.

19 Q Did you ever ask to have copies that were
20 sent to the FCC made and sent back to you to establish
21 that you had actually prepared the Supplemental
22 Ownership Reports at the proper time?

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1 A At that time I don't recall having that as
2 an idea about how I could verify that we had a copy.
3 It seemed - I think we were operating under very short
4 time lines and found that this would just to --
5 because nobody could remember if that had been created
6 specifically that the thing that would be the easiest
7 would be to prepare a document and have it signed, a
8 new one rather than ask the FCC for a copy of theirs.

9 Q Now I understand that full well, but it's
10 now March 8, 2001, and the response to the FCC's
11 letter is not due for another four weeks at this
12 point.

13 If it came to your attention that, or you
14 understood that, there were documents that had been
15 prepared but were then taken out of the public file
16 and that's why they're not there and that's why you
17 had to prepare new Supplemental Ownership Reports in
18 December of '97, if the Ownership Reports had been
19 prepared in a timely manner, wouldn't they also have
20 been sent to the FCC for filing?

21 A That seems like a logical matter that we
22 would have certainly have sent the original would have

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1 been sent to the FCC.

2 Q With that in mind, was there any inquiry
3 made to the FCC or to Mr. Sanchez to obtain the copies
4 that would have been filed with the FCC?

5 A To the best of my knowledge, nobody ever,
6 I didn't, and I don't recall anybody making that
7 request of Ernie or Ernie making that suggestion.

8 Q The e-mail also makes reference to, in the
9 final sentence following Number 1, also missing were
10 January 31, 1999, July 31, 2000, and January 31, 2001.
11 These have been filled out and signed, enclosed are
12 originals. Then the following pages of EB 21 have
13 various Ownership Reports along with them.

14 Did you have any role in preparing
15 Ownership Reports for 1999, 2000, and 2001?

16 Q This period after the February 2001, the
17 ones that Nicole Sawaya is referring to here in this
18 letter, I believe was involved in preparing those
19 documents.

20 A Did you do that on your own or did
21 somebody ask you to do that?

22 Q At that time in March, February, March of

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1 2001 I was operating -- this was out of conversation
2 with the attorneys in responding -- how they were
3 going to be responding to the February letter, and out
4 of my inspecting the public file then in February of
5 2001, I reported back to them what appeared to not be
6 there, and that perhaps was the -- those Ownership
7 Reports that are referred here.

8 Subsequent to that I started preparing
9 those forms so they could be signed by School District
10 official. Those are the ones that she's referring to
11 here.

12 Q Moving on to Number 2, well first of all,
13 in respect to Number 1, the EB Exhibit 14 which we
14 talked about before which is the February 8, 2001, fax
15 of the Commission's letter from Susan Jenkins to you,
16 the one that says, please call me.

17 A Right. Yes.

18 Q What I'm interested in having you look at
19 appears on Page 3 of that fax transmission, the second
20 page of the FCC's letter. The particular question is,
21 "accordingly we direct SFUSD to respond to the
22 following questions." The first question, "Number 1,

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1 on October 1, 1997, when the subject License Renewal
2 Application was filed, did the KALW(FM) public
3 inspection file contain all of the ownership and
4 supplemental ownership reports required to be kept in
5 the file by then Section 73.3527?"

6 Ms. Sawaya's memo answers that question,
7 no. Is that an accurate answer?

8 A My knowledge of the public file of
9 ownership, regarding ownership reports that were
10 certified in August -- status of it in 1997 was based
11 on Jeff Ramirez marking yes.

12 Q Mr. Helgeson, that wasn't my question.
13 It's a very simple yes or no question. Was the no
14 response given by Nicole Sawaya accurate to Question
15 1?

16 A I don't know how Nicole made that
17 conclusion based on the information that she saw in
18 the public file.

19 Q It calls for a yes or no response. Was
20 Ms. Sawaya's answer no accurate?

21 MR. DUNCAN: Objection. You showed him a
22 document -- he saw a document yesterday which I don't

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1 know the details of that may be causing him some
2 difficulty -- having some difficulty in answering
3 because he is seeing something that's happened since.
4 Are you asking as of that time, what he knew as of
5 that time, or are you asking him everything he's
6 learned since?

7 MR. SHOOK: I'm asking is the response
8 accurate. Is the no response accurate?

9 JUDGE SIPPEL: I'm going to overrule the
10 objection, but I want to ask - this issue is
11 absolutely right and it's straight-up question. Do
12 you understand it? Are you having trouble with what
13 he's asking you, I mean do you understand it? Do you
14 understand the question?

15 THE WITNESS: Yes, I believe I understand
16 the question.

17 JUDGE SIPPEL: He read to you what the FCC
18 wrote on February 2000 and what they were asking for,
19 and then he answered he read the response of Ms.
20 Sanchez which was no to the question. Now what's the
21 trouble with that question?

22 THE WITNESS: I believe that in 2001 -- I

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1 believe that in 1997 the file was -

2 JUDGE SIPPEL: No, no, no, this is March
3 8, 2001.

4 THE WITNESS: Oh, I'm sorry.

5 JUDGE SIPPEL: Go ahead, yes. You
6 believed in 1997 --

7 THE WITNESS: I believed in 1997 that the
8 file regarding ownership reports was complete. That
9 was the mindset that I have always had that it was
10 complete by what Jeff Ramirez said.

11 MR. SHOOK: So as I understand --

12 JUDGE SIPPEL: Let him finish. Go ahead.
13 Not that what?

14 THE WITNESS: Not that I had independently
15 reviewed the file in August of 1997 and could make
16 that statement but that I was relying on Jeff Ramirez
17 certifying at that time that it was complete, and the
18 mindset was that documents were not there later in
19 1997 and couldn't be found it was again the conclusion
20 was we were dealing with people who had been rifling
21 through the files in some way. That's how we could
22 justify -- that's how we explain documents not being

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1 there that Jeff had certified were there in August of
2 97.

3 MR. SHOOK: Okay, so in response to my
4 question whether or not the no response that Nicole
5 gave was accurate, your testimony would be no, it was
6 inaccurate?

7 BY MR. SHOOK:

8 A My response would be that I believe the
9 answer to Question 1 was yes, again, based on what
10 Jeff Ramirez had certified back then, and that's
11 something our attorneys -- certainly our attorneys who
12 had -- the Sanchez and Jenkins attorneys had been on
13 this case and filed all these documents and realized
14 what Jeff had certified to and so on in 1997 and early
15 1998 in the responses.

16 I had no reason -- had been given no
17 reason to question that Jeff had put the wrong answer
18 down in August of '97.

19 Q Okay, returning to EB Exhibit 21, after
20 two the answer reads, "no, the premises of KALW(FM)
21 were almost entirely destroyed during the Loma Prieta
22 earthquake in the fall of 1989 in San Francisco.

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1 Until the beginning of 1997 when KALW moved to its
2 current location (Philip and Sala Burton High School)
3 the station was moved several times to temporary
4 facilities.

5 "During this period KALW was operating out
6 of a variety of abandoned school gyms. Many day-to-
7 day operations did not happen during this period, and
8 the record keeping ability of the station was severely
9 hampered by the constant changing of locations.

10 "Most files and paperwork were kept in
11 boxes, some of which were lost as moves kept
12 occurring. Unfortunately, the public file of
13 Issues/Programs was susceptible to the physical chaos
14 at the station."

15 Do you know how Ms. Sawaya obtained the
16 information to respond as she did to Point 2?

17 MR. DUNCAN: I object based on lack of
18 foundation because he's asking how she could respond
19 to a question and the question isn't before the
20 witness.

21 MR. SHOOK: I'm asking how he knows, if he
22 knows, how she obtained the information to respond.

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1 If he doesn't know, he can say so.

2 MR. DUNCAN: Well, there is no indication
3 on the record that this witness even knows that that
4 was the response to a question, and the questions --
5 there also is no -- there's an awful lot of facts in
6 there, and I just want to make sure that whatever the
7 witness testifies to, it's very clear whether he's
8 saying he knows the answer to and which ones he does
9 not.

10 MR. SHOOK: I would be perfectly to have
11 him elaborate on that.

12 THE WITNESS: So the question is did I --
13 how did she get this information to --

14 BY MR. SHOOK:

15 Q Do you have any knowledge as to how she
16 obtained the information to answer the question as she
17 did?

18 A I believe her knowledge what the status of
19 the station was and the various moves and all that
20 were something she became aware of in conversations
21 with me and perhaps others at the station.

22 Q So you provided at least some information

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1 that she used in this answer?

2 A I would say I would have provided some of
3 the information -- at least some of the information
4 especially about the history, about the various moves,
5 earthquake, and so on.

6 Q Well, can you identify in the answer what
7 you told her or what information you imparted to her?

8 A Specific items here, no I can't say
9 specifically. I could have given her just about all
10 of this as far as the status of the various moves,
11 things being in boxes, earthquakes, abandoned gyms,
12 and so on. There's nothing in there that I wasn't
13 aware of, so I probably -- I possibly was the one who
14 gave her that kind of information. Incidentally, she
15 wasn't at the station at that time.

16 Q Other than the no response, is there
17 anything that Ms. Sawaya is saying in response to
18 Question 2 which is inaccurate?

19 A Regarding that description is inaccurate.

20 Q Now, the question which this apparently
21 responds to is the FCC letter question that appears in
22 EB Exhibit 14, Page 3. On August 1, 1997, did the

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1 KALW public inspection file contain all of the issues,
2 programs lists required by then Section 73.3527?

3 Then there is a second question that
4 follows. Did any listing in the file contain the
5 information required by Section 73.3527? Ms. Sawaya's
6 response to one or both of those questions, it's
7 unclear, is no.

8 Is the no response accurate or inaccurate?

9 A One moment, please. I'm going to review
10 the question.

11 (Whereupon, the above-entitled matter went
12 off the record at 3:25 p.m. and resumed at 3:25 p.m.)

13 THE WITNESS: I'm ready.

14 JUDGE SIPPEL: All right. We're back on.

15 THE WITNESS: Again, the question was is
16 her answer accurate or - her "no" accurate or
17 inaccurate was the question?

18 MR SHOOK:Yes.

19 THE WITNESS: Okay. Answering that
20 question I would say that I always believed that the
21 answer was -- that Jeff had satisfied himself to the
22 extent that he was about on August '97 to say the

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1 answer was -- he was able to mark yes to that
2 question, and I always assumed that he was correct.
3 I had no way of knowing that he wasn't correct in
4 answering that question in August of '97.

5 So answering the question in 2001 I had
6 really nothing else to -- I wouldn't have made it a
7 different answer in 2001. Again, the attorney
8 certainly knew what Jeff's answer was in 1997
9 regarding that, so I was always, again, under the
10 impression that when reviewing the file in late '97,
11 and he said that there was something -- he said
12 something wasn't there.

13 We again thought it was again people who
14 had been going through my private files in that public
15 file drawer.

16 BY MR SHOOK

17 Q Were you aware of what Mr. Ramirez
18 supposedly based his certification on, and if you'd
19 like I could read for his declaration where he said
20 what he based his certification on?

21 A I haven't read other than a line or two,
22 I don't recall reading Jeff Ramirez's declaration, so

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1 perhaps maybe I should be looking at that.

2 JUDGE SIPPEL: Well, I don't think that
3 this witness is even qualified to do something like
4 that. He's going to read Mr. Ramirez's declaration
5 and then make a judgment call from the witness stand
6 as to whether or not?

7 MR. SHOOK: The witness is telling us that
8 he based -- he's basing his current assessment as to
9 whether or not Ms. Sawaya's response was accurate or
10 inaccurate based on something, some belief, with
11 respect to Mr. Ramirez's certification, and I was
12 wondering whether Mr. Helgeson knew what Mr. Ramirez
13 was supposedly basing his certification on.

14 JUDGE SIPPEL: I don't -- he's answered
15 the questions, came forward, he's given his reason as
16 to why, and the record is either going to support him
17 or is not going to support him. I don't think you
18 have to get him to go back into it, and then -- I
19 don't think it's going to lead to anything that is
20 going to be useful or reliable.

21 BY MR. SHOOK:

22 Q Were you aware on or about March 8th, 2001,

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1 that Ms. Sawaya apparently believed that the FCC
2 Question Number 2 should be answered no?

3 A I would say I was not aware of that.
4 That's how she was answering the question. I wasn't
5 at that time, again, I was just working on making sure
6 everything that should have been in the public file
7 and that documents -- preparing the public file to
8 make sure it was complete. I wasn't involved in
9 specifically preparing answers to the questions of the
10 February 5th FCC letter.

11 Q Move down to Point 4, EB Exhibit 21.

12 JUDGE SIPPEL: Go off the record while
13 you're reading.

14 (Whereupon, the above-entitled matter went
15 off the record at 3:30 p.m. and resumed at 3:30 p.m.)

16 MR SHOOK: Do you have any knowledge as to
17 how Ms. Sawaya obtained the information that appears
18 in response to Number 4?

19 JUDGE SIPPEL: This is again Bureau
20 Exhibit 21.

21 MR. SHOOK: Yes.

22 THE WITNESS: Regarding bringing ownership

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1 reports up to date, she certainly probably saw that
2 that was something that I was working on doing. Also,
3 she probably -- she inspected the -- had her own
4 personal inspection of the file.

5 BY MR. SHOOK

6 Q In terms of this sentence, KALW's reports
7 were spottily corrected during the late 1990's. Where
8 did she get that from so far as you know?

9 A I don't know where she got that answer
10 from other than her own -- that's the conclusion she
11 drew from whatever inspection she did.

12 Q She didn't get that information from you?

13 A I don't recall if I made that comment to
14 her.

15 Q She would have -- are you saying that she
16 would have been able to figure that out from looking
17 at the file contents?

18 A Are you referring to her sentence here
19 that says, in the late '90s? I'm not sure when she
20 says late '90s which specific ownership report she's
21 referring to. She said the late '90s, the 97 one, the
22 99 one.

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1 Q Well maybe adding the next sentence would
2 help the context. However, all reports were corrected
3 in the fall of 1997 when matters came to the attention
4 of then-General Manager Jeff Ramirez.

5 To your knowledge, how would Ms. Sawaya
6 have found that out?

7 A I could speculate on it, but I don't have
8 an answer for you knowing exactly how she came to that
9 information.

10 Q You didn't tell her?

11 A I don't recall telling her, and she may
12 have, again, she may have -- from her own inspection
13 of the file. I don't recall.

14 Q Were you aware that she had responded to
15 Number 4 as she did on or about March 8, 2001?

16 A I wasn't aware of her response on March 8
17 or -- in this -- in her draft answer.

18 Q Looking at her draft answer now, is there
19 anything in that draft answer that you believe to be
20 inaccurate?

21 A She does say that the 19 -- can I just
22 have one moment. I think the sentence that seems to

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